

UOCA FILE



**EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503**

October 19, 1988
LEGISLATIVE REFERRAL MEMORANDUM

SPECIAL

TO: SEE ATTACHED DISTRIBUTION LIST

OCA 3480/88 -

SUBJECT: "One-pagers" on major provisions of the House and Senate drug bills.

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with Circular A-19.

Please provide us with your views no later than

Please provide corrections, if needed, ASAP.

Direct your questions to Gregory Jones (395-3454), of this office.

James J. Jones for
Assistant Director for
Legislative Reference

Enclosures

cc: Ken Schwartz	Phyllis Scheinberg
Frank Kalder	Kevin Scheid
Lana Hurdle	Dick Williams
	Kevin Cummings

DISTRIBUTION LIST

<u>AGENCY</u>	<u>CONTACT</u>	<u>PHONE NUMBER</u>
Department of Defense (206)	Sam Brick	697-1305
Department of Justice (217)	Jack Perkins	633-2113
Department of State (225)	Bronwyn Bachrach	647-4463
Department of Transportation (226)	Tom Herlihy	366-4684
Department of the Treasury (228)	Carole Toth	566-8523
National Drug Policy Board (238)	David Pickens	633-4928
National Security Council		
Central Intelligence Agency		

**PROVISIONS IN HOUSE AND/OR SENATE DRUG BILLS THAT THE
ADMINISTRATION STRONGLY SUPPORTS**

- o Death Penalty -- In House and Senate; Senate language is preferable.
- o Chemical Diversion and Trafficking -- In both bills; Senate language preferable.
- o Exclusionary Rule -- In both bills; House language is broader and is therefore preferable.
- o Anti-Public Corruption -- In Senate bill.
- o Child Pornography -- In Senate bill.
- o Debt Collection -- In Senate bill.
- o User Accountability -- In both bills; Senate language is preferable.
- o Drug-Free Workplaces -- In both bills; Senate language is preferable.
- o Innocent Owner -- Strongly support Senate version.
- o Money Laundering - Strongly support House and Senate money laundering amendments, particularly D'Amato IRS undercover enhancement provisions in Senate bill (but not U.S. currency reporting requirement; see below).

PROVISIONS THAT THE ADMINISTRATION STRONGLY OPPOSES

- o Drug Czar -- In House and Senate versions.
- o FAA Legislative/Regulatory Bypass and Paperwork Reduction Act Exemption -- In House bill.
- o Foreign Aid/Presidential Reporting Requirements -- In House bill.
- o Diplomatic Immunity -- In Senate bill.
- o U.S. Currency Transaction Reporting by Foreign Banks ("Kerry Amendment") -- In Senate bill. (Administration does support other money laundering provisions in both House and Senate bills, however. See above.)
- o Protection for Intelligence Activities -- Not in House bill; Senate bill better but needs to be strengthened.
- o Innocent Owner -- Strongly oppose House version.

- o Recovery of Costs Incurred by State and Local Law Enforcement Agencies -- In House bill.
- o Drug Testing and Mandatory Rehabilitation in the Transportation Industry -- In Senate bill.

OTHER

- o Habeas Corpus -- In neither bill, although Senate contains an unobjectionable provision aimed at ensuring that a bill is considered in the 101st Congress.
- o Funding.

10/19/88 - 10:45 A.M.

DEATH PENALTY

HOUSE PROVISION: Permits imposition of the death penalty in appropriately serious drug cases and for killing of law enforcement officers, with certain limitations and restrictions (e.g., a prohibition on imposing the death penalty on mentally retarded persons).

SENATE PROVISION: Similar provisions.

ADMINISTRATION POSITION: The Administration supports imposition of the death penalty and urges that such a provision be retained in any drug legislation that is presented to the President. The Administration prefers the Senate version, however. Among other things, the House version does not contain a constitutionally-necessary appeals mechanism (which was apparently deleted inadvertently in the House).

Chemical Diversion and Trafficking

House Provision: Amends the Controlled Substances Act to regulate the distribution, importation, and exportation of certain precursor and essential chemicals used in the illicit manufacture of controlled substances.

Senate Provision: Basically the same thrust as the House Provision except that Senate tougher on sanctions.

Administration Position: The Administration prefers the Senate provision.

-- The Senate language is tougher-- felony sanctions-- for violations of recordkeeping requirements.

Drug Bill - Exclusionary Rule Reform

The House version of the exclusionary rule provision would make the exclusionary rule inapplicable where a search or seizure was carried out in an "objective, reasonable, good faith belief" that it was in conformity with the Fourth Amendment. The Senate version purports to codify the Supreme Court's decision in United States v. Leon, 468 U.S. 897 (1984), which admits evidence obtained in objectively reasonable reliance on a warrant.

The House version involves a significant advance over current law, since it would extend the objective reasonableness (so-called "good faith") exception to warrantless searches and seizures. However, the drafting of the House version is technically deficient, in that it might be interpreted as requiring subjective good faith, as well as objectively reasonable conduct by officers.

The Senate version is objectionable in that it represents no advance whatsoever over current caselaw. Moreover, there are a number of drafting deficiencies in the Senate version, which could result in its being interpreted as a narrowing of the existing caselaw exception to the exclusionary rule for cases involving objectively reasonable reliance on a warrant.

The Administration should support the general approach of the House version -- an exception applying to both warrant and non-warrant cases -- subject to correction of the drafting problem noted above. Specifically, we should support the following basic formulation:

Evidence which is obtained as a result of a search or seizure shall not be excluded in a proceeding in a court of the United States on the ground that the search or seizure was in violation of the fourth amendment to the Constitution of the United States, if the officers responsible for the search or seizure acted with objective good faith. Objective good faith exists in the sense of this section if the circumstances of the search or seizure would justify an objectively reasonable belief that it was in conformity with the fourth amendment. The fact that evidence was obtained pursuant to and within the scope of a warrant constitutes prima facie evidence of the existence of such circumstances.

Anti-Public Corruption

House Provision:

Senate Provision:

The core of this bill would punish schemes to deprive or defraud individuals or the government of the honest services of public officials and employees, both elected and appointed.

Administration:

The Administration prefers the Senate provision.

The Senate bill includes language which overturns the Supreme Court decision in the McNally case which limited mail fraud statutes as applied to fraud involving intangible rights. This provision is not in the House bill.

Child Pornography

House Provision:

Does not contain the President's Child Protection and Obscenity Enforcement Act provisions.

Senate Provision:

Senate bill contains the President's Child Protection and Obscenity Enforcement Act provisions (See provisions below).

Administration Position:

The Administration supports the Senate provision because it includes the following measures:

- prohibitions on the buying and selling of children for use in pornographic enterprises, punishable by a minimum 20 year prison term;
- requiring producers and distributors of pornography to keep records establishing the ages of persons appearing in pornographic depictions after February 6, 1978;
- stiff criminal and civil forfeiture provisions for those who produce child pornography and obscenity;
- imposition of civil fines in obscenity cases;
- enhanced penalties for possession of obscene material with intent to sell or distribute;
- criminal sanctions for cable television and dial-a-porn distribution of obscenity;
- prohibitions on the possession or sale of child pornography or obscenity on federal property or lands.

Debt Collection

House Provision: The House provision does not include the Administration's Federal Debt Collection Procedures Act.

Senate Provision: This provision would enhance the remedies available to the United States and establish uniform procedures in all federal judicial districts for the collection of debts. The Senate provision contains the Administration's Federal Debt Collection Procedures Act.

Administration Position: The Administration supports the Senate provision which contains the Federal Debt Collection Procedures Act.

-- Currently, the enforced collection of money judgements in favor of the United States must be done under the prevailing law of the state in which the debtor is found. The Senate version would correct this inconsistency.

User Accountability

House Provision:

Denies Federal benefits upon a single conviction for drug trafficking or two convictions for drug use. Ineligibility can extend up to 10 years for traffickers and 5 years for users. Period of ineligibility can be shortened if offender completes a treatment program or has otherwise been rehabilitated.

The term "Federal benefit" means: any grant, contract, loan, license, or public housing provided by the Federal Government. It includes some veteran's benefits if the offense is drug trafficking, but does not include any retirement, welfare, health, disability, or other similar benefit.

Senate Provision:

Drug Traffickers:

Denies "unearned" benefits as follows:

- 1st offense: optional denial, up to 5 years
- 2nd offense: optional denial, up to 10 years
- 3rd offense: mandatory, permanent denial of benefits

Drug Users:

Denies "unearned" and "non-means-tested" benefits as follows:

- 1st offense: optional denial, up to 1 year, plus may also require participation in treatment program (including drug testing) and community service
- 2nd & subsequent offenses: optional denial, up to 5 years.

Provides for waiver of denial if offender can substantiate that he/she is an addict and if he/she submits to treatment program. Can also obtain waiver if addict becomes rehabilitated.

Definitions:

"Federal benefits" include: issuance of Federal mortgage guarantees, all Governments loans, grants, benefits, contracts with, and licenses or permits issued by, the Government.

"Means-tested" includes programs where eligibility is determined, in part, on the basis of income and assets.

"Earned Federal Benefits" means Social Security and other retirement benefits, all veterans benefits, and any other benefits for which payments or services are required for eligibility.

Administration Position

Support the Senate bill as superior, for following reasons:

- provides for a graduated system of penalties, thus enhancing deterrent effect
- provides wider discretion to sentencing officials in determining appropriateness of penalty

10-18-88 (ver.2)

Drug-Free Workplaces

House Provision: Requires contractors and grantees of the Federal government to establish drug-free workplaces meeting specified criteria (e.g., establishing a drug awareness program). Those who fail to comply are subject to suspension or debarment. Very limited waivers are available for individual contracts and grants.

Senate Provision: Similar provisions; however, would apply only to contracts of more than \$25,000. In addition, would use existing suspension and debarment procedures rather than establish new ones involving the Boards of Contract Appeals and mandate that all drug-free workplace requirements be consistent with the international obligations of the U.S.

Administration Position: Support the general thrust of both House and Senate provisions but strongly prefer the Senate version. Still need at least ~~two~~ amendments to the Senate version, however. First, waiver authority must be expanded to include entire classes of contracts and grants, rather than only individual contracts and grants. This authority is needed to enable department heads to exempt overseas contracts from these requirements should the need to do so arise. If this is not possible, would settle for making waiver authority delegable. Second, must have provision clarifying relationship between these drug-free workplace requirements and those in Section 628 of the Treasury-Postal Service Appropriations Law. Specifically, need to have a provision included in the bill which says, "Compliance with the provisions of this Subtitle by January 16, 1989, shall satisfy the requirements of Section 628 of the Treasury-Postal Service Appropriations Law (P.L. 100-440)."

Innocent Owners

House Provision: Creates statutory "innocent owner" defense against forfeiture for owners of conveyances able to demonstrate that they had no knowledge of illegal drugs on their conveyances.

Senate Provision: Requires Justice and Treasury to develop an administrative procedure by which an innocent owner can obtain the timely release of his property if personal use quantities are found on that property, by proving his innocence and showing that he took reasonable steps to keep drugs off his property. Also provides for issuance of a summons in lieu of physical seizure for commercial fishing vessels engaged in fishing operations when personal use quantities are discovered.

Administration Position: Strongly support the Senate provision and strongly oppose the House provision.

- o The ability of the government to seize and forfeit conveyances -- vessels, vehicles, or aircraft -- involved in drug trafficking is an important law enforcement tool. The Senate provision provides a defense against forfeiture only in the case of personal use quantities of illegal drugs; the House provision provides protection even if trafficking quantities of illegal drugs are discovered.
- o The Senate provision requires property owners to take positive steps to keep drugs off their property; the House provision only requires that the owner had no knowledge and did not consent to the presence of drugs, and thereby invites owners to turn a blind eye to use of their conveyances for drug trafficking.

MONEY LAUNDERING

IRS Undercover Enhancement
"Churning" Operating Funds

House Provision: None.

Senate Provision: D'Amato Amendment

Administration Position: Support.

The first amendment makes explicit that the agents of the IRS Criminal Investigation Division (Special Agents) have the same authority with respect to enforcement of laws delegated by the Secretary as with respect to tax laws. This specifically applies to criminal enforcement of the Bank Secrecy Act and the Money Laundering crimes, 18 U.S.C. 1956 and 1957. Currently, there is no reference to this delegated authority in the Code. Since the undercover amendment discussed below would be made primarily in support of the delegated functions, Treasury views this amendment as appropriate at this time.

The second amendment enhances and facilitates the authority of the IRS to conduct undercover operations in furtherance of detection and prosecution of tax violations and violations of other matters within the investigatory authority of the Internal Revenue Service pursuant to delegation by the Secretary of the Treasury. This proposal will be especially useful in money laundering and Bank Secrecy Act operations. Under the proposal, in cases where it is determined necessary by the Commissioner, IRS undercover activities would be free from the fiscal restrictions and procurement requirements applicable to federal agency activities generally. For instance, IRS would be able to reinvest profits from an undercover business in the business or offset the proceeds against operation expenses rather than deposit the profits immediately to the Treasury General Fund, as would otherwise be required. At the conclusion of the operation, proceeds remaining would be returned to the Treasury.

This provision is modeled on the authority for Customs undercover operations enacted as part of the Anti-Drug Abuse Act of 1986, 19 U.S.C. 2081. Similar authority exists for FBI and DEA.

MONEY LAUNDERING

Section 6050(i) IRS Undercover Provision

House Provision: None.
Senate Provision: D'Amato Amendment.
Administration Position: Support.

The amendment to section 6050I of the Internal Revenue Code addresses the problem of law enforcement access to reports filed under that section. Section 6050I requires cash reporting of sums in excess of \$10,000 received in trades or businesses other than those covered by the Bank Secrecy Act (BSA). The reports are, in many instances, of comparable interest in drug cases to reports filed under the BSA, e.g., reports on the cash purchase of vehicles or real estate. However, the IRS disclosure restrictions in IRC 6103 currently do not allow analysis of the information and law enforcement access on a par with BSA information.

The amendment exempts reporting under section 6050I from the disclosure restrictions of section 6103. The section 6050I reports will be able to be analyzed with BSA reports, and disseminated to law enforcement agencies to the same extent as BSA reports. Enforcement responsibility for section 6050I would remain with IRS. Section 6050I reports (like BSA reports) would be exempt from FOIA. The proposal also adds an anti-structuring provision applicable to customers who structure transactions to avoid the reporting requirements of section 6050I (comparable to the BSA anti-structuring provision, 31 U.S.C. § 5324).

The amendment also increases the civil penalty provision applicable to intentional violations of section 6050I from the current maximum of 10% of the unreported transaction. The proposed increase is to 10% of the unreported transaction amount or the profits of the trade or business derived from the transaction, whichever is greater. In cases involving intentional sales of luxury goods to drug traffickers, a 10% penalty is inadequate to reach the profits of the seller.

The Internal Revenue Service and the federal law enforcement establishment agree that these reports have enormous utility beyond tax enforcement. For purposes of tracing the money laundering activities of drug organizations and locating the assets of drug traffickers for forfeiture actions, law enforcement needs to know how drug proceeds are spent. Law enforcement needs to know if Mercedes or jewelry or homes are being purchased with cash for more reasons than whether the person has paid his taxes.

6050(1)

-2- MONEY LAUNDERING

There also has to be stringent penalties for businesses that cater to the drug trade, comparable to the penalties that apply to banks under the Bank Secrecy Act.

This amendment allows (1) the Secretary of the Treasury to disseminate the reports to law enforcement on a par with Bank Secrecy Act reports and (2) the information to be merged with the Bank Secrecy Act database to be used to its maximum potential applying sophisticated analytical processes.

The amendment makes the profits of a businessman who deals with drug traffickers short-lived. Willful failure to file will be a felony and civil penalties for willful violations will be up to the profits of the sale.

DRUG CZAR

HOUSE PROVISION: Establishes the Office of Drug Enforcement Coordination in the EOP and abolishes the National Drug Policy Board. Functions limited to law enforcement matters.

SENATE PROVISION: Establishes the Office of National Drug Control Policy in the EOP and abolishes the National Drug Policy Board and the White House Drug Abuse Policy Office. Functions include all drug-related activities. Would permit drug czar to attend meetings of the NSC.

ADMINISTRATION POSITION: Oppose. The new President should have an opportunity to make recommendations in this area.

FAA Legislative/Regulatory Bypass and
Paperwork Reduction Act Exemption

House Provision: Provides the FAA with limited concurrent budget submission authority, a legislative bypass, and limited exemption from Paperwork Reduction Act. In addition, authorizes the FAA to modify its aircraft registration system, its system for issuing airman's certificates, and related systems to make them more effective in drug law enforcement. Establishes criminal penalties for false marking of aircraft and similar acts.

Senate Provision: Increases penalties for importation of controlled substances by aircraft.

Administration Position: Senate bill is preferable because of highly objectionable concurrent budget submission requirement and Paperwork Reduction Act provisions in the House bill.

The legislative/regulatory bypass and paperwork reduction act exemption were specifically opposed by Director Miller in September 6th letters to House ~~Minority Leader Michel~~ and House Speaker Wright. The letters state:

"If the President is to manage the Executive branch effectively and efficiently -- as he must -- it is imperative that he be able to exercise ultimate control over the subordinate officials who assist him.... Concurrent legislation requirements of the kind contained in this legislation would undermine and inhibit free and candid communication between the President and his subordinate officials. As a result, the President's ability to administer the Executive branch would be needlessly and inappropriately impaired."

"In addition, the proposed legislative bypass authority would represent an unacceptable interference with the President's control over the deliberative processes of the Executive branch by preventing necessary coordination in the development of legislative policies within the Executive branch."

"With respect to the proposed Paperwork Reduction Act exemption, I am unaware of any possible justification for such an exemption. The Paperwork Reduction Act serves a very important purpose in assuring central Executive branch oversight of information collection requests, recordkeeping requirements, and the like."

"I would, however, recommend that the President veto any legislation that contains the provisions cited previously."

Foreign Aid/Presidential Reporting Requirements

House Provisions:

The country specific provisions of Title III in H.R. 5210 impose additional criteria the President must consider in certifying whether Bolivia, Peru, Mexico, Pakistan, India, or Laos have cooperated with the U.S. or taken adequate measures on their own to curb the production and transit of illicit drugs.

Senate Provisions:

S. 2852 does not contain similar country-specific provisions.

Administration Position:

Prefer the international narcotics control provisions in the Senate bill.

Talking Points:

-- The Administration opposes those provisions in the House bill that add criteria to those the President already must consider in determining whether a specific drug source or transit country should be certified to receive continued foreign assistance.

-- These provisions will impinge upon the Executive's prerogative to formulate U.S. foreign policy and will unduly restrict the President in the conduct of foreign affairs.

October 17, 1988

Diplomatic Immunity

House Provision: No provision.

Senate Provision: Establishes additional rules regarding immunity of foreign diplomats in the United States. For example, whenever there is "probable cause" to suspect that a person with diplomatic immunity from prosecution under the criminal laws of the United States "may have committed a serious criminal offense," State Department would be required immediately to expel from the United States (or seek a waiver of immunity with respect to) the person involved. State would also be required to establish by regulation requirements with which foreign missions in the United States would have to comply for obtaining adequate liability insurance to afford adequate compensation for injuries to persons resulting from the operations of such missions.

Administration Position: Strongly oppose. Enactment of this legislation could have grave consequences for U.S. diplomats serving abroad by inviting a reciprocal response by foreign governments. Several provisions are constitutionally questionable since they would interfere with the President's authority to conduct foreign relations and the power to receive ambassadors and foreign ministers.

DIPLOMATIC IMMUNITY ABUSE PREVENTION ACT

- The Department of State strongly opposes this amendment to the Senate's version of the Omnibus Drug Bill.
- Any U.S. action tampering with the widely accepted regime on diplomatic immunity invites reciprocal responses, not only against U.S. diplomats serving abroad, but against any United States representative performing official functions overseas, including Congressional delegations.
- It also sets a precedent for extremist nations to justify violations of fundamental obligations.
 - For example, the legislation forbids the Department from discouraging any investigation, charge or prosecution of members of foreign missions and their families, even though many of these persons are legally entitled to immunity and the State Department has a legal obligation to make this clear to law enforcement authorities.
- The legislation also contains constitutional defects.
 - It infringes upon the President's authority to receive Ambassadors and other public Ministers by prohibiting individuals from enjoying diplomatic or consular immunity in the U.S. if at the time of their accreditation there are charges of criminal conduct pending in any U.S. jurisdiction, no matter how ill-founded.
 - The legislation also unconstitutionally forbids the Executive to consult states or other federal authorities about matters affecting foreign relations.
- The Department of State is also concerned about certain sections of the legislation that assign functions to particular offices in the Department rather than to the Secretary of State. This interferes with the Secretary's flexibility to delegate the responsibilities to subordinates as he deems necessary and adequate.
- The State Department agrees with many of the legislation's objectives and already follows tough and strict policies in dealing with diplomatic crime.

U.S. Currency Transaction Reporting by Foreign Banks

House Provision: **None.**

Senate Provision: **Kerry Amendment**

Administration Position: **Please see attached "talking Points
Against Kerry Amendment."**

Talking Points Against Kerry Amendment

- o The amendment gives the Secretary of the Treasury two years to negotiate agreements with foreign governments to require their financial institutions to maintain records of large U.S. currency transactions, including the source of the currency, and to agree to provide the records to U.S. law enforcement upon request.
 - If after two years, the Secretary is not successful in reaching an agreement with a country whose financial institutions are engaging in transactions involving the proceeds of international narcotics trafficking, the amendment requires that the President impose sanctions. The sanctions could include preclusion from the United States banking system.
- o The proposal is (1) unenforceable, (2) counterproductive to international cooperation in fighting drug money laundering, and (3) poses a threat to U.S. economic interests.
- o Even if our negotiations are successful and foreign countries enact currency reporting systems, there would be no effective way for the U.S. to oversee the effectiveness of the foreign regulatory schemes.
 - We cannot monitor the activities of foreign bank regulators. Our experience with currency reporting in the U.S. illustrates that there will be lax compliance without a diligent enforcement program with regular compliance audits and the possibility of civil and criminal sanctions.
 - There would be no way to disprove an assertion by a foreign bank that the requested record did not exist.
 - It would be impossible to verify the accuracy of the transactor's certification of the source of the currency. We do not require such a certification with respect to currency transactions in the U.S.
- o This unprecedented attempt at extraterritorial application of a bank regulatory requirement is perceived as an affront to their sovereignty by our allies who are cooperating in the international war against narcotics trafficking.
 - For instance, in September, based largely on their concern with a previous Kerry proposal, the participants at the Toronto Summit Narcotics Task Force meeting refused to even discuss certain initiatives suggested by the U.S.
 - Enactment of this proposal could jeopardize ratification of the U.N. Convention against Narcotics Trafficking due for a vote in December in Vienna. The convention obliges signatories to enact money

Kerry Amendment

-2-

laundering and drug forfeiture legislation and to provide a mechanism for the exchange of financial evidence. These measures will be more useful in the long run in the fight against money laundering than currency reporting.

-- We are concerned that enactment will curtail future cooperation in joint investigations such as Operation C-Chase announced last week, whose success depended heavily on cooperation with British and French Customs.

o Finally, the proposed sanctions could punish U.S. financial institutions and damage U.S. economic interests.

-- The proposal would work against the objective of maintaining the United States position as an international financial center and would invite retaliation against U.S. financial institutions abroad.

-- If we impose impediments to conducting transactions in dollars, such as denying access to wire clearing systems, the market could turn to alternative international currencies.

17 OCT 1988

Title of Issue: Protection for Intelligence Activities

House Provision:

1) Drug Czar: House "drug czar" intrudes on Intelligence Community in programmatic and fiscal areas and contains no intelligence information protection provision.

2) GAO Oversight of Intelligence Community R&D Facilities: House bill contains no provision on this subject

Senate Provision:

1) Drug Czar: Senate "drug czar" intrudes programatically and fiscally on Intelligence Community in a major way but does contain intelligence information protection and a minimal programmatic protection provision.

2) GAO Oversight of Intelligence Community R&D Facilities: Original Senate bill had amendment giving GAO oversight of Intelligence Community R&D facilities used in anti-drug efforts. Not clear whether Senate leadership amendment resolved this issue.

Administration Position:

1) Drug Czar: Within overall Administration opposition to "drug czar", Administration urges Congress to include in any drug legislation appropriate provisions carrying forward from current law protections for Intelligence Community programmatic, fiscal and information concerns. Administration supports Senate information provision and thrust of programmatic provision but believes it must be strengthened and expanded to include fiscal concerns.

2) GAO Oversight of Intelligence Community R&D Facilities: If Senate bill as amended by Senate leadership amendment does not contain provision removing GAO oversight of Intelligence Community R&D Facilities, it should be included in any subsequent version of bill.

**Recovery of Costs Incurred by
State and Local Law Enforcement Agencies**

House Provision: None

Senate Provision: As Introduced by Senator Chiles, in the core of the bill.

Administration Position: Oppose.

As currently drafted, this reimbursement proposal is not limited to narcotics-related cases, or even to criminal investigations. State recoveries under this provision would not necessarily be reduced by other state recoveries of expenses. Thus, a potential for double-reimbursement exists. We feel that determinations to commit resources to pursue criminal investigations should be made on factors other than the tax revenues (or reimbursements) that might result. In addition, this provision may not actually provide additional resources directly to state or local law enforcement agencies, since many states require the deposit of reimbursed funds into the state general fund. The existing system of grants, advance agreements to pay expenses, and the sharing of forfeiture fund proceeds is a more appropriate method of aiding these agencies. This provision may also reduce the impetus for state and local law enforcement agencies to pursue the forfeitures of drug traffickers under state and local law, when tax-reimbursement will be forthcoming.

Rehabilitation Opportunities for Transportation Workers
Subject to Drug and Alcohol Testing

House Provision: While not passed as part of H.R. 5210, the House has passed a drug and alcohol testing program for rail workers that would guarantee mandatory rehabilitation, paid for by the employer, whether or not the worker with a problem volunteers for treatment prior to an accident, rule violation, or positive test result in random testing (H.R. 4748). The House has not acted in the case of motor carrier, mass transit, aviation, and FAA workers, but has established toxicological laboratory certification standards for most workers, including federal employees, that offer other employee protections also found in H.R. 4748 (e.g., private right-of-action for violation of testing requirements).

Senate Provision: Title V, Subtitle E, of S. 2852 establishes alcohol and drug testing programs for safety-sensitive workers in rail, motor carrier, aviation, FAA, and mass transit areas. Generally, an "opportunity for rehabilitation" is specified, with suspension and eventual dismissal from a safety-sensitive position for on-duty impairment and failure to undertake or successfully complete rehabilitation when available.

Administration Position: While there is already clear legislative authority under existing transportation safety statutes to mandate appropriate testing as an element of programs for the control of drug and alcohol use by workers in safety-sensitive positions, the Administration would welcome enactment of legislation that would buttress the Department of Transportation's authority in the area. However, (1) the issue of rehabilitation should be addressed in detail only in the rulemaking process, (2) the adherence to HHS drug-testing guidelines should be "to the extent practicable", (3) any new private right-of-action for rail workers and others should be limited to matters not covered by the arbitration process, (4) confidential treatment of results and various limits on testing should not prevent existing investigation and law enforcement actions (e.g., post-accident blood tests by state police), and (5) new statutory requirements should not undercut existing rail drug testing requirements or their pending review by the Supreme Court.

Habeas Corpus

Senate Provision: While not in either bill (House or Senate), the Senate bill contains language which is intended to force action by Congress next year. The House bill does not contain any such provision.

Administration Position: The Administration supports the Senate provision since it forces Congress to deal with this issue next year.

Funding

House Provision:

Authorizes total appropriations of \$6.2 billion for 1989, which is \$2.1 billion over current 1989 appropriations. Of the \$2.1 billion, approximately \$1.4 billion (67 percent) is for drug law enforcement programs and \$0.7 (33 percent) is for demand reduction programs.

Senate Provision:

Authorizes total appropriations of \$4.1 billion for 1989, which is \$2.5 billion over current 1989 appropriations. Of the \$2.5 billion, approximately \$1.0 billion (40 percent) is for drug law enforcement and \$1.5 billion (60 percent) for demand reduction programs.

Administration Position

Any additional appropriations for anti-drug programs must be consistent with the Bipartisan Budget Agreement and must meet the G-R-H deficit reduction targets. The October 15 report issued by the Office of Management and Budget stated that any appropriations yielding more than \$545 million in outlays for the remainder of fiscal year 1989 will result in a deficit that exceeds the deficit reduction target of \$146 billion.